



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Roadmaster Trailers Unlimited, Inc.

File: B-237385

Date: January 8, 1990

DIGEST

1. Protest that bidder was not informed that it could request a waiver of the solicitation's requirement of first article testing is denied where solicitation clearly provided that requirement would be waived upon approval by agency and set forth procedure for applying for waiver.
2. Protest that estimated cost of transporting contract items from bidder's facility to selected agency locations should not be added to bid price for purpose of evaluating f.o.b. origin bids is denied to extent that protester argues such evaluation is contrary to solicitation, because solicitation provides that bid evaluation is to include estimated transportation costs.

DECISION

Roadmaster Trailers Unlimited, Inc., protests the award of a contract to Kasel Manufacturing Co. under invitation for bids (IFB) No. DAAE07-89-B-J108, issued by the Army for trailers. Roadmaster argues that the agency did not inform it that it could have requested a waiver of the solicitation's first article testing requirement, and complains that first article testing was waived for Kasel. Roadmaster further contends that in calculating the total evaluated price of the bids the agency should not have added to the bid prices the cost of transporting the contract items to selected agency facilities.

We deny the protest in part and dismiss it in part.

The IFB required first article testing by the government, but permitted waiver of this requirement in appropriate circumstances. The IFB provided that if first article testing was required, its estimated cost (\$50,820) would be added to the bid price for evaluation purposes. The solicitation provided for bids on the basis of f.o.b. origin

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(i.e., for delivery to a carrier at the bidder's facility), f.o.b. destination (for delivery to selected agency facilities), or both. The solicitation incorporated a clause which stated that the agency's estimate for transportation costs for f.o.b. origin bids, based on the mode(s) of transportation which would result in the lowest overall cost, would be added to the bid price for evaluation purposes. Under items where both f.o.b. origin and f.o.b. destination prices were solicited, the lower of the two prices would be used to determine the low bidder after the transportation costs were added to the f.o.b. origin price.

Roadmaster, whose bid price was low before the estimated cost of first article testing was added to its bid, first argues that it was never informed that it could request a waiver of first article testing. The solicitation, however, clearly informed bidders that first article testing was required, and provided that the testing may be waived upon approval by the agency. Further, the solicitation detailed the procedure for applying for a waiver of first article testing, and listed the factors the agency would consider in determining whether to grant the requested waiver. Therefore, we find Roadmaster's argument that it was never informed that it could request a waiver of first article testing to be without merit.

Roadmaster next questions the waiver granted Kasel. Kasel requested a waiver of first article testing in its bid submission as required by the solicitation, as well as through the submission of a separate letter to the agency. Kasel's request was reviewed by the agency, and approved on the basis that Kasel had, on April 28, 1988, successfully completed first article testing on a similar trailer supplied to the government under another solicitation.

An agency's decision to waive first article testing for a particular offeror is subject to question only where it is shown to be unreasonable. Comdyne I, Inc., B-232574, Dec. 21, 1988, 88-2 CPD ¶ 611. As Kasel complied with the solicitation requirements in applying for the waiver, and the waiver was granted based on Kasel's recent successful completion of first article testing on a similar trailer, we have no basis upon which to question the agency's decision to waive first article testing for Kasel.

Roadmaster next argues that transportation costs should not have been added to its bid price by the agency when it evaluated the protester's f.o.b. origin bid. The solicitation incorporated by reference the clause at Federal Acquisition Regulation § 52.247-47, which states that in evaluating f.o.b. origin bids, the "transportation cost

will be added to the offer price in determining the overall costs of the supplies to the government." Therefore, to the extent the protester is arguing that the addition of transportation costs was contrary to the solicitation, the protest is denied. To the extent the protester is complaining that such an evaluation scheme is improper, the protest is untimely since it concerns an alleged impropriety apparent on the face of the solicitation, and thus should have been raised prior to bid opening to be considered. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1989); Perdomo & Sons, Inc., B-234614, Apr. 3, 1989, 89-1 CPD ¶ 346.

Accordingly, the protest is denied in part and dismissed in part.

A large, stylized handwritten signature in black ink, likely belonging to James F. Hinchman, is written over the typed name.

James F. Hinchman
General Counsel